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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE WESTERN DISTRICT OF WASHINGTON**
9 **AT SEATTLE**

10 JOHN K. WARD and SUSAN WARD,
Husband and Wife,

11 Plaintiffs,

12 V.

13 ASC LEASING VI INC., OSG SHIP
14 MANAGMENT, INC., *in personam*, and the
15 OVERSEAS BOSTON, Official Number
1207239, *in rem*,

16 Defendants.

AT LAW AND IN ADMIRALTY

Case No. 2:15-cv-211

VERIFIED COMPLAINT *IN PERSONAM*
AND *IN REM* FOR PERSONAL INJURY
AND FOR LOSS OF CONSORTIUM

Jury Trial Demanded

17 **CLAIMS AGAINST THE DEFENDANTS**

18 Come now the plaintiffs, John K. Ward and Susan Ward, Husband and Wife, and for their
19 complaint against the Defendants, allege:
20

21 **I. JURISDICTION & VENUE**

22 1.1 This is a claim for personal injuries sustained by a maritime pilot against ASC
23 LEASING VI INC., OSG SHIP MANAGEMENT, INC., the owners and operators of OVERSEAS
24 BOSTON, *in personam*. This is also an *in rem* claim against the OVERSEAS BOSTON. Susan
25 Ward also makes a claim for loss of consortium. The Plaintiffs are citizens of the State of
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1 Washington. The Defendant Corporations are citizens of a state other than the State of
2 Washington. The amount in controversy exceeds \$75,000 exclusive of interest and costs. It is
3 respectfully submitted that this Honorable Court has subject matter jurisdiction of this case
4 pursuant to 28 U.S.C. § 1332(a)(1).

5 1.2 This Honorable Court also has jurisdiction of the *in rem* claim against the vessel
6 pursuant to 28 U.S.C. § 1333.

7 1.3 Pursuant to 28 U.S.C. § 1391(b)(1) & (2), and the Local Rules for the United States
8 District Court for the Western District of Washington, venue for this action lies in Seattle,
9 Washington.
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11 **II. THE PARTIES**

12 2.1 Plaintiff John Ward, a maritime pilot, served as a compulsory pilot to the
13 OVERSEAS BOSTON. Susan Ward is Pilot Ward's spouse and pursues a claim for loss of
14 consortium. The Wards are citizens of the State of Washington.

15 2.2 Defendant OSG Ship Management, Inc. is a corporation or some other legally
16 recognized entity. At all times relevant hereto, this Defendant operated the OVERSEAS
17 BOSTON. Defendant OSG Ship Management, Inc. is a citizen of some state other than
18 Washington.
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20 2.3 Defendant OSG Ship Management, Inc. manages a fleet of ten American Flag
21 petroleum transporting vessels. The Defendant also manages other tankers, both foreign and
22 American. The Defendant's ships OVERSEAS BOSTON, OVERSEAS NIKISKI, OVERSEAS
23 LOS ANGELES, and OVERSEAS MARTINEZ are currently sailing the American West Coast.

24 2.4 Defendant ASC LEASING VI, Inc., is a corporation or some other legally
25 recognized entity. This Defendant is the registered owner of the OVERSEAS BOSTON. At all
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1 times relevant hereto, this Defendant owned and/or operated the OVERSEAS BOSTON.

2 Defendant ASC LEASING VI, Inc. is a citizen of some state other than Washington.

3 2.5 Defendant OVERSEAS BOSTON, Official Number 1207239, is a tank ship 183.21
4 meters long, 32.2 meters in breadth and 29,242 Gross Tons. The OVERSEAS BOSTON flies the
5 U.S. Flag and makes regular trips between Anacortes, Washington and ports in California. The
6 ship will moor in Anacortes, Washington during the pendency of this matter.
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8 **III. BACKGROUND FACTS**

9 3.1 Defendant OSG Ship Management, Inc. operates a fleet of American flag tankers,
10 some of which operate on the American West Coast.

11 3.2 The Defendants' ships and the OVERSEAS BOSTON are subject to 46 U.S.C. §
12 3202(a).

13 3.3 46 U.S.C. § 3204 required the Defendants to establish a Safety Management Plan
14 and to have that plan approved by the United States Coast Guard.
15

16 3.4 Pursuant to the authority granted by 46 U.S.C. §§ 3202(a) and 3204, the Secretary
17 adopted safety regulations. The regulations provide in pertinent part:

18 Major non-conformity means an identifiable deviation which poses a serious
19 threat to personnel or vessel safety or a serious risk to the environment and
20 requires immediate corrective action; in addition, the lack of effective and
21 systematic implementation of a requirement of the ISM Code is also considered
22 a major non-conformity.

23 33 C.F.R. § 96.120.

24 The safety management system must:

25 Provide for safe practices in vessel operation and a safe work environment
26 onboard the type of vessel the system is developed for;

Establish and implement safeguards against all identified risks[.]

1 33 C.F.R. § 96.230.

2 The Defendants' Safety Management Plan was required to implement:

3 (d) Procedures for reporting accidents, near accidents, and non-conformities
4 with provisions of the company's and vessel's safety management system, and
5 the ISM Code[.]

6 33 C.F.R. § 96.240.

7 3.5 These statutes and safety regulations required the Defendants to develop and
8 implement a Safety Management Plan that would immediately remedy major non-conformities
9 that posed a risk to persons employed in any connection with the ship.

10 3.6 The Defendants established a Safety Management Plan.

11 3.7 The Defendants appointed a "Responsible Person" to be in charge of enforcing the
12 Plan.

13 3.8 Based upon information and belief, OSG Ship Management, Inc. provided the
14 shore-side management for the Safety Management Plan for the OVERSEAS BOSTON, as well as
15 the other American flag ships in its fleet.

16 3.9 Problems with pilot ladders on any of the Defendants' American Flag ships would
17 be known to the Responsible Person.

18 3.10 Problems with pilot ladders on any of the Defendants' American Flag ships should
19 have been known to the Responsible Person.

20 3.11 As a shipowner and operator, the Defendants were required to provide Pilot
21 Ladders to board the vessel. 46 U.S.C. § 32.90-1.

22 3.12 In the maritime industry it is universally understood that if the pilot ladders are
23 defective in almost any way, pilots are at risk of serious injury or death while they are boarding
24 the vessel.

ships. *See e.g.* 46 C.F.R. § 35.05-1; M. Armstrong, Pilot Ladder Safety, (6th Ed. 2012); SOLAS Chapter V Regulation 23 (Pilot transfer arrangements).

3.13 The Defendants' ships call in Prince William Sound, Alaska.

3.14 In 2014, there were at least three pilot ladder incidents with the Defendants' ships in Prince William Sound.

3.15 The Defendants' ships employed a pilot ladder magnet that was manufactured by PTR Holland, a company located in the Netherlands.

3.16 The PRT Holland pilot ladder magnets are designed and constructed to be affixed to the ship's hull fore and aft of the pilot ladder. Thus, the PTR Holland system requires that two independent magnets be used. The magnets are then secured to the pilot ladder with a soft line.



3.17 The Defendants altered the PTR Holland pilot ladder magnets by adding a bracket to go over both of the pilot ladder's vertical sides. Thus, only one magnet was used. The PTR Holland design was also modified with the addition of brackets that served as a remote quick release. This remote quick release bracket was attached to a soft line.



3.18 Based upon information and belief, the Defendants never vetted these modifications with PTR Holland.

3.19 Based upon information and belief, PTR Holland never authorized these modifications to its pilot ladder magnet system.

3.20 Based upon information and belief, PTR Holland, if asked, would not have authorized these modifications to its pilot ladder magnet system.

3.21 The modifications to the PTR Holland pilot ladder magnet system defeated all of the safety engineering and testing that PTR Holland conducted before it sold the pilot ladder magnets.

3.22 Aboard the Defendants' ships, in Prince William Sound, three Pilots had dangerous incidents with the Defendants' modified pilot ladder magnets.

1 3.23 All of these encounters occurred before Pilot Ward was injured.

2 3.24 In 2014, before Pilot Ward was injured, Captain Martin spoke with the Defendants'
3 Safety Manager and warned him about the dangers presented to the pilots using the pilot ladders
4 by the Defendants' pilot ladder magnets.

5 3.25 Under Federal Statutes and Safety Regulations, the Defendants were required to
6 document Captain Martin's report, do a root cause analysis, and to make changes to eliminate the
7 dangers caused by the modified PTR Holland pilot ladder magnets.

8 3.26 The Defendants' ships also call at various California ports. On September 4, 2014,
9 the Defendants' Ship OVERSEAS NIKISKI was entering the San Francisco harbor area.

10 3.27 Captain Ridens, a San Francisco Bar Pilot, was assigned to the ship. As he was
11 aboard the pilot ladder, the modified magnet fell off the ship, striking Captain Ridens' head and
12 knocking his glasses to the deck of the pilot boat below.

13 3.28 The OVERSEAS NIKISKI's mate observed this magnet failure.

14 3.29 On September 8, 2014, Pilot Ward was assigned the task serving as the pilot for the
15 OVERSEAS BOSTON.

16 3.30 Pilot Ward boarded the Puget Sound Pilots' pilot boat at the dock located on Ediz
17 Hook, Port Angeles, Washington.

18 3.31 The pilot boat transported Pilot Ward to the OVERSEAS BOSTON, which was
19 maneuvering on a course of 70 degrees at 8 knots.

20 3.32 The OVERSEAS BOSTON had prepared the pilot ladder so that Pilot Ward could
21 board the ship.

1 3.33 Unknown to Pilot Ward or the Puget Sound Pilots' Association, but well known to
2 the Defendants, there had been dangerous problems with the modified PTR Holland magnets that
3 the Defendants used to attach the pilot ladders to the ship's hull.

4 3.34 The cause of the dangerous condition was that the Defendants improperly modified
5 the magnets which had the tendency to disconnect from the hull and strike the pilot using the
6 ladder.

7 3.35 In this particular case, an improperly modified pilot ladder magnet broke loose, fell
8 several feet, striking Pilot Ward on the head.

9 3.36 If the Defendants had simply used the PTR Holland magnets as designed, Pilot
10 Ward would never have been injured.

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12 **IV. NEGLIGENCE**

13 4.1 For their cause of action for General Maritime Law negligence, the Plaintiffs
14 incorporate by reference Paragraphs 3.1 to 3.37 above and further allege as follows.

15 4.2 The Defendants violated mandatory safety rules imposed upon the Defendants by
16 the United States Code and the Code of Federal Regulations.

17 4.3 The Defendants failed to provide Pilot Ward with a safe place to work.

18 4.4 The Defendants failed to provide Pilot Ward with a proper pilot boarding ladder, as
19 required by the Code of Federal Regulations.

20 4.5 The Defendants failed to warn Pilot Ward, or the Puget Sound Pilots Association,
21 of the multiple previous failures of the modified magnet system.

22 4.6 The Defendants failed to do a proper root cause analysis and risk analysis after
23 multiple pilot ladder magnet failures.

1 4.7 The Defendants failed to exercise reasonable care to provide Pilot Ward with a safe
2 pilot ladder.

3 4.8 The Defendants failed to provide adequate, proper, and sufficient hazard prevention
4 controls on the day that Pilot Ward was injured.

5 4.9 The Defendants intentionally modified the PTR Holland pilot ladder magnet
6 system.

7 4.10 The failure of the modified magnet system presented an obvious risk of serious
8 injury or death to the pilots using the Defendants' pilot ladders.

9 4.11 Nevertheless, despite this obvious risk of serious injury or death, the Defendants
10 continued to use the modified magnet system until the United States Coast Guard prevented the
11 Defendants from doing so.

12 4.12 The Defendants' statutory and regulatory violations make the Defendants negligent
13 *per se*.

14 4.13 The Defendants were negligent in other and further particulars to be proven at trial.

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17 **V. NO COMPARATIVE FAULT**

18 5.1 Pilot Ward was aboard the pilot ladder with the Defendants' permission. The
19 Defendant never warned Pilot Ward about all the other dangerous incidents with the modified
20 magnets. Pilot Ward did nothing wrong to cause the pilot ladder magnet to fall off. Pilot Ward is
21 not comparatively at fault.

22 **VI. NO ASSUMPTION OF THE RISK**

23 6.1 Pilot Ward was legally upon the pilot ladder at the time that he was injured. Pilot Ward
24 was using the Defendants' pilot ladder, which was needlessly and inherently dangerous and which,
25 unknown to him at the time, presented a significant risk of catastrophic injury or death to a pilot
26

1 using the same. Pilot Ward did not assume the risk of working with an inherently and needlessly
 2 dangerous piece of equipment. *Tiller v. Atlantic Coast Line R. Co.*, 318 U.S. 54, 63 S.Ct. 444
 3 (1943).

4 **VII. DAMAGES**

5 7.1 As a direct and proximate result and/or legal cause of the negligence of the
 6 Defendants, plaintiff sustained multiple injuries including, but not limited to: head injury, neck
 7 injury, traumatic brain injury, and other neurological injuries. The full extent of his injuries is
 8 presently undetermined. He has suffered pain, anguish, and disability in the past and will in the
 9 future. He has incurred medical expenses in the past and may in the future. The full extent of the
 10 impairment to his wage-earning capacity is presently undetermined. He has lost wages in the past
 11 and will lose wages in the future.
 12

13 7.2 As a direct and proximate cause of the Defendants' negligence, Susan Ward has
 14 suffered loss of consortium with her husband. Susan Ward is entitled to full and fair compensation
 15 as provided by law for this loss.
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17 **VIII. PUNITIVE DAMAGES**

18 8.1 The Defendants acted intentionally in modifying the PTR Holland pilot ladder
 19 magnets. The Defendants' actions violated United States Coast Guard safety rules. The
 20 Defendants were on notice that the modified magnets were detaching from the ships' hulls and
 21 striking the pilots while they were aboard the pilot ladder. The Defendants were on notice that a
 22 pilot ladder magnet detaching and hitting a pilot while he or she was aboard the pilot ladder
 23 presented a risk of catastrophic injury or death to the pilot. The Defendants' failure to use the
 24 magnets as designed, and to also discontinue using the modified magnets after the Defendants
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1 were warned of the life-threatening danger, was intentional, willful, and in reckless disregard of
 2 the pilots' safety. The Defendants are liable for exemplary damages. *Exxon Shipping Co. v.*
 3 *Baker*, 554 U.S. 471, 128 S.Ct. 2605 (2008); *Protectus Alpha Navigation Co. Ltd. v. North Pacific*
 4 *Grain Growers, Inc.*, 767 F.2d 1379 (9th Cir. 1985).

5 WHEREFORE, plaintiff prays for a joint and several judgment, in accordance with the
 6 evidence to be presented at the time of trial and as may be permitted under the General Maritime
 7 Law, for all general and special damages permitted under the law including, but not limited to: loss
 8 of consortium, entitlements, lost wages both past and future, loss of wage earning capacity, pain
 9 and suffering both past and future, temporary disability, permanent disability, past medical bills,
 10 future medical bills, future attendant care expenses, mental anguish and loss of life's enjoyments,
 11 punitive damages, exemplary damages, together with taxable costs, maritime prejudgment interest,
 12 and attorney fees. Plaintiff prays for all remedies and procedures available under the law.
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14 DATED this 11th day of February, 2015.

15 Respectfully submitted,

16 BEARD, STACEY & JACOBSEN, LLP

17 By: /s/ James P. Jacobsen

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VERIFICATION

James P. Jacobsen, being first duly sworn, deposes and sayeth: that he has conducted an investigation into this matter and he has interviewed witnesses and examined photographs and documents including the CG 2692 Report. Furthermore, that he has read the foregoing Complaint and, based upon his investigation and the facts made known to him, that all the facts and allegations therein are true and correct to the best of his knowledge and belief. That he, as the attorney for John Ward and Sue Ward, is authorized to make to this Verification on behalf of the Plaintiffs.

/s James P. Jacobsen

James P. Jacobsen